



**U.S. Citizenship
and Immigration
Services**

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 8771264

Date: AUG. 12, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a writer and author, seeks classification as an alien of extraordinary ability. See Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had satisfied only two of the initial evidentiary criteria, of which she must meet at least three.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. See Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement

(that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. See *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

II. ANALYSIS

The Petitioner indicates employment as a “literary non-fiction writer and business/commercial writer.” Because the Petitioner has not established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The Director found that the Petitioner submitted evidence relating to seven of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3) but established that the Petitioner fulfilled only two criteria, relating to membership in associations at 8 C.F.R. § 204.5(h)(3)(ii) and published material at 8 C.F.R. § 204.5(h)(3)(iii). For the reasons discussed later, we do not concur with the Director’s decision relating to the membership and published material criteria.

On appeal, the Petitioner maintains that she meets two additional criteria.¹ After reviewing all the evidence in the record, we conclude that the Petitioner does not establish that she satisfies the requirements of at least three criteria.

A. Evidentiary Criteria

Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.
8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner argues that she satisfies this criterion based on membership with The Federation of Hong Kong Writers (TFHKW). In order to fulfill this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.² The Director

¹ We note that the Director determined that the Petitioner initially submitted evidence related to lesser nationally or internationally recognized awards at 8 C.F.R. § 204.5(h)(3)(i), leading or critical roles criteria at 8 C.F.R. § 204.5(h)(3)(viii), and high salary at 204.5(h)(3)(ix), but did not satisfy these criteria. The Petitioner does not contest these issues on appeal and therefore we deem them to be waived. See, e.g., *Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

² See USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 6 (Dec. 22, 2010),

determined that that the Petitioner satisfied this criterion. On appeal, the Petitioner maintains that the following previously submitted evidence establishes that she meets this criterion: (1) an undated letter from [REDACTED] TFHKW; (2) a March 2019 letter from [REDACTED] (3) a March 2019 letter from [REDACTED] TFHKW; and (4) a 2019 Chinese language article from an unidentified source by [REDACTED] titled “[REDACTED] [REDACTED]” Reviewed in its totality, the evidence does not demonstrate that membership in TFHKW requires outstanding achievements as judged by recognized national or international experts in the Petitioner’s field or discipline. Because the record does not reflect that the Petitioner established eligibility under the regulation at 8 C.F.R. § 204.5(h)(3)(ii), we will withdraw the findings of the Director for this criterion.

Regarding the letters from [REDACTED] in her undated letter she confirms the Petitioner has been a member of TFHKW since [REDACTED] 2013 and asserts that the federation is “an exclusive association for established writers who have already published two books and gained outstanding achievements in the field of literature.” In her letter dated March 2019, [REDACTED] provides “the minimum requirement to be considered by the committee for admission into the organization is to be referred by two existing members, have articles published frequently and regularly in major literary newspapers or magazines, have published books and are recognized widely for the quality of publications and talent in writing.” She indicates that when those minimum requirements are met, “the committee extensively reviews the applicant’s writing, body of work, and their influence and impact on the literary landscape of Hong Kong and China, at large.” Finally, she claims that the association “accepted [the Petitioner’s] application due to her achievement in winning the championship of [REDACTED] Literary Awards, her publications in major literary magazines and newspapers and the quality of the books she wrote.” She further provides that “the committee members unanimously recognized that [the Petitioner] had already had significant original contribution to the literary landscape in Hong Kong.”

[REDACTED] of TFHKW and chief editor of [REDACTED] magazine, indicates that as a judge of the 2012 [REDACTED] Literary Awards he met the Petitioner, read her award-winning article [REDACTED]” and “referred” her to become a member of TFHKW in 2013. He asserts that TFHKW is “composed of writers who already demonstrated significant contribution to the literary landscape in Hong Kong” and its vetting process is “extremely selective.” He indicates that for admission to TFHKW “writers must be referred by a minimum of two existing members . . . must have published regularly and frequently in major publications and must have published a literary book.” In addition, the vetting committee must unanimously agree “on the applicant’s prominence in the Hong Kong literary scene, the significance of the contribution they made as a writer, and the strength of their writing abilities.” He indicates that some past members of the association are author [REDACTED] and journalist [REDACTED] He provides that “[t]he fact that [the petitioner] was admitted, at such a young age . . . demonstrate[s] that she is a prodigy who has already changed the literary landscape of Hong Kong” He refers to several of the Petitioner’s articles

<https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual’s distinguished achievements in original research).

published in the magazines Hong Kong Writers, Mengya, and One between 2015 and 2016, after the date when the Petitioner became a member of TFHKW.³

The Petitioner also provided an article dated 2019 written by [redacted] from an unidentified Chinese-language webpage, in which [redacted] indicates that she participated in seminars and lectures organized by members of TFHKW, met the Petitioner, and “found out that in order to be accepted into [TFHKW], the applicant not only need[s] to be referred by at least two existing members but also need[s] to have tremendous writing talents, personal achievements and contribution to the literary scene to be recognized and approved by the Executive Committee.” [redacted]’s article, however, does not explain how she knows of the membership requirements for the association.

Upon review, the letters from [redacted] and [redacted] do not establish that to become a member of TFHKW “recognized national or international experts in their disciplines or fields” must judge the Petitioner’s “outstanding achievements,” as required under the plain language of the criterion.⁴ The letters do not provide information as to who evaluated the Petitioner’s qualifications before selecting her as a member or whether the individual(s) who evaluated her qualifications are “national or international experts in their disciplines or fields.” The Petitioner must document that she meets each element in the plain language of the criterion. The Petitioner must, therefore, provide some documentation from the federation relevant to the nature of who is responsible for making the appointments.

In addition, the Petitioner has not shown that the requirement that prospective members provide evidence of having “published regularly and frequently in major publications and must have published a literary book” is tantamount to imposing an “outstanding achievement” requirement for membership. In addition, while the letters from TFHKW indicate that the association considers in the membership process the applicant’s “influence and impact on the literary landscape of Hong Kong and China, at large” or “prominence in the Hong Kong literary scene, the significance of the contribution they made as a writer, and the strength of their writing abilities,” these statements are not adequately supported by objective evidence of how these factors are considered or weighed. The record does not establish the process by which prospective members are evaluated, nor does it demonstrate that TFHKW imposes additional qualitative criteria that amount to an “outstanding achievements” requirement, as asserted by [redacted]

Moreover, we note that the letters from [redacted] and [redacted] differ as to the selection criteria, and the record lacks evidence that corroborates the actual selection requirements for membership in the TFHKW. The record does not contain the federation’s constitution or bylaws that discuss membership requirements and the qualifications of membership application reviewers. The Petitioner has not shown that the selection requirements [redacted] and [redacted] listed in their letters came from any official documents, such as the society’s constitution or bylaws.

³ The record indicates that prior to the date when the Petitioner became a member of TFHKW two of her articles, ‘[redacted]’ and [redacted] were published, respectively, in Mengya magazine supplement (2012) and Meiwen magazine (2013). In addition, the record reflects that in 2012 her book [redacted] was published, describing her experiences in [redacted] during her junior year abroad while an undergraduate student at The Chinese University [redacted]

⁴ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6-7.

For the reasons discussed above, the Petitioner did not demonstrate that she satisfies this criterion, and we withdraw the Director's decision for this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

The Director found that the Petitioner satisfied this criterion without identifying the qualifying material and explaining his determination. In order to meet this criterion, the Petitioner must demonstrate published material about her in professional or major trade publications or other major media, as well as the title, date, and author of the material.⁵ Because the record does not reflect that the Petitioner established eligibility under the regulation at 8 C.F.R. § 204.5(h)(3)(iii), we will withdraw the findings of the Director for this criterion.

On appeal, the Petitioner maintains that she is eligible for this criterion based on six online articles about her and relating to her work, and evidence relating to www.qq.com, www.ifeng.com, www.163.com, and www.sina.com.cn. However, the record does not establish that the media in which these articles were published can be considered either professional or major trade publications or another type of major media. For example, the Petitioner submitted country ranking and/or website traffic regarding www.ifeng.com, www.qq.com, www.163.com, and www.sina.cn, internet portals which are popular in China. However, the aforementioned articles were posted on specific webpages within those portals, such as js.qq.com, js.news.163.com, news.dichan.sina.com.cn, canews.ifeng.com, the Franklin Reading Club webpage (mp.weixin.qq.com), and the Hong Kong Writers Magazine blog (blog.sina.com.cn), about which information was not provided. Here, the record does not include information regarding the specific media on which these articles were published, and they are therefore not qualifying under this criterion. In addition, the Petitioner did not demonstrate the author of the article published on news.dichan.sina.com.cn. The inclusion of the author is not optional but a regulatory requirement. See 8 C.F.R. § 204.5(h)(3)(iii).

For the reasons discussed above, the Petitioner did not demonstrate that she satisfies this criterion, and we withdraw the Director's decision for this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of a one-time achievement. In addition, we find that the Petitioner does not satisfy the criteria relating to memberships in associations requiring outstanding achievements and published materials about her and her work in the field. Although she submits evidence for two additional criteria on appeal, relating to original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v) and scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi), we need not reach these additional grounds. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve these issues.⁶ Accordingly, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-

⁵ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

⁶ See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).

20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); see also section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and she is one of the small percentage who has risen to the very top of the field of endeavor. See section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). Although the Petitioner has experience as a writer and author, the record does not contain sufficient evidence establishing that she is among the upper echelon in her field.

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.